

Revised 12

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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| USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: DATE FILED <u>AUG 10 2011</u> |
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DIOGENES NUNEZ and SATURNIO SANTOS, individually and on behalf of all other persons similarly situated who were employed by SHIRT RESTAURANT CORP. d/b/a ISLAND RESTAURANT and/or any other entities affiliated with, controlling, or controlled by SHIRT RESTAURANT CORP. d/b/a ISLAND RESTAURANT and JOHN MCLAUGHLIN

Plaintiffs,

-against-

SHIRT RESTAURANT CORP. d/b/a/ ISLAND RESTAURANT and/or any other entities affiliated with, controlling, or controlled by SHIRT RESTAURANT CORP. d/b/a ISLAND RESTAURANT and JOHN MCLAUGHLIN in both his official and individual capacities,

Defendants.
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Civil Action No.: 11 CV 2553 (GSD)

Daniels, J

STIPULATION REGARDING CIRCULATION OF COLLECTIVE ACTION NOTICE

Plaintiffs and Defendants, by and through their undersigned counsel, hereby stipulate and agree as follows upon the following premises.

WHEREAS Plaintiffs commenced this suit, alleging claims under the Fair Labor Standards Act, as a collective action, and New York Labor Law, as a class action, in the United States District Court for the Southern District of New York; and,

WHEREAS Plaintiffs were employed by Defendant as kitchen workers; and,

WHEREAS, counsel for Plaintiffs and counsel for the Defendants entered into negotiations regarding the scope of the collective action class; the appropriate form of notice to circulate to that class; and the appropriate information to be provided to Plaintiffs' counsel for purposes of disseminating the notice; and,

WHEREAS, the parties have reached agreement on the scope, form and manner of distribution of the notice in this matter; and

WHEREAS, the parties have agreed to mediate the claims of Plaintiffs, any additional opt-in Plaintiffs, and any individuals made known to Plaintiffs with New York State claims;

NOW THEREFORE IT IS STIPULATED AND AGREED AS FOLLOWS:

1. Defendant shall circulate the notice of pendency approved by the court in this matter to current and former kitchen workers who have been employed by Defendant Shirt Restaurant Corp. at any time between the period from July 19, 2008 and the date that this stipulation is signed ("Class List"). If the parties are unsuccessful at mediation, Defendants reserve the right to seek decertification of this collective action group following completion of discovery in this matter, and Plaintiffs reserve the right to apply to the Court for certification of a larger class of individuals

2. Plaintiffs shall translate into Spanish the notice attached hereto as Exhibit A ("Notice") and the consent to join form attached hereto as Exhibit B ("Consent"). Plaintiffs shall file proof of the accurate translation with the Court.

3. On or before August 16, 2011, Defendants shall mail one copy of the Notice and Consent form in both English and Spanish, to each individual identified on the Class

List. For individuals whose Notice and Consent are returned as undeliverable, Defendant shall, within three (3) business days, notify counsel for plaintiffs of the return by email, stating the name of the individual whose mailing was returned as undeliverable, and on what date the mailing was returned.

4. Within three (3) days of circulating the notice, counsel for Defendants shall provide counsel for Plaintiffs with the list of kitchen workers identified in Paragraph 1. This list shall include the name of each individual and whether they are a current or former employee. This Class List is being provided for the sole purpose of confirming and corroborating the identity of the recipients of the notice in this matter as set forth herein, and shall not be used for any other purpose.

5. Each individual on the Class List shall have forty-five (45) days from the date of mailing of the Notice to postmark their Consent form to Plaintiffs.

6. Mediation shall occur for Plaintiffs, any additional opt-in Plaintiffs, and any individuals made known to Plaintiffs with New York State claims within 30 days of the Notice bar date.

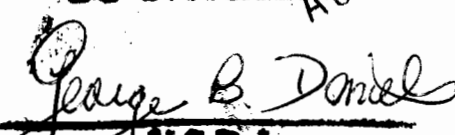
SO STIPULATED AND AGREED ON THIS 3rd DAY OF AUGUST, 2011.

By: 

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By: 

JACKSON LEWIS, LLP
ATTORNEYS FOR DEFENDANTS
SHIRT RESTAURANT CORPORATION
AND JOHN MCLAUGHLIN
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SO ORDERED

U.S.D.J.
HON. GEORGE B. DONOHUE